

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:  FAIRFIELD SENTRY LIMITED, et al.,  Debtor in Foreign Proceedings.	Chapter 15 Case  Case No. 10-13164 (CGM)  Jointly Administered
FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,  Plaintiffs,  v.  THEODOOR GGC AMSTERDAM, et al.,  Defendants.	Adv. Pro. No. 10-03496 (CGM)  Administratively Consolidated
FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,  Plaintiffs,  v.  CITIBANK NA LONDON, et al.,  Defendants.	Adv. Pro. No. 10-03622 (CGM)
FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,  Plaintiffs,  v.  BGL BNP PARIBAS S.A., et al.,  Defendants.	Adv. Pro. No. 10-03626 (CGM)

<p>FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,</p> <p>Plaintiffs,</p> <p>v.</p> <p>BNP PARIBAS SECURITIES SERVICES LUXEMBOURG, et al.,</p> <p>Defendants.</p>	<p>Adv. Pro. No. 10-03627 (CGM)</p>
<p>FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,</p> <p>Plaintiffs,</p> <p>v.</p> <p>HSBC SECURITIES SERVICES (LUXEMBOURG) SA, et al.,</p> <p>Defendants.</p>	<p>Adv. Pro. No. 10-03630 (CGM)</p>
<p>FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,</p> <p>Plaintiffs,</p> <p>v.</p> <p>HSBC PRIVATE BANK (SUISSE) SA, et al.,</p> <p>Defendants.</p>	<p>Adv. Pro. No. 10-03633 (CGM)</p>
<p>FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,</p> <p>Plaintiffs,</p> <p>v.</p> <p>ZURICH CAPITAL MARKETS CO., et al.,</p> <p>Defendants.</p>	<p>Adv. Pro. No. 10-03634 (CGM)</p>

FAIRFIELD SENTRY LTD. (IN  
LIQUIDATION), et al.,

Plaintiffs,

v.

ABN AMRO SCHWEIZ AG, et al.,

Defendants.

Adv. Pro. No. 10-03635 (CGM)

FAIRFIELD SENTRY LTD. (IN  
LIQUIDATION), et al.,

Plaintiffs,

v.

ABN AMRO SCHWEIZ AG, et al.,

Defendants.

Adv. Pro. No. 10-03636 (CGM)

FAIRFIELD SENTRY LTD. (IN  
LIQUIDATION), et al.,

Plaintiffs,

v.

UBS AG NEW YORK, et al.,

Defendants.

Adv. Pro. No. 10-03780 (CGM)

FAIRFIELD SENTRY LTD. (IN  
LIQUIDATION), et al.,

Plaintiffs,

v.

BNP PARIBAS ARBITRAGE SNC, et al.,

Defendants.

Adv. Pro. No. 10-04098 (CGM)

FAIRFIELD SENTRY LTD. (IN  
LIQUIDATION), et al.,

Plaintiffs,

v.

BNP PARIBAS PRIVATE BANK & TRUST  
CAYMAN LTD., et al.,

Defendants.

Adv. Pro. No. 10-04099 (CGM)

FAIRFIELD SENTRY LTD. (IN  
LIQUIDATION), et al.,

Plaintiffs,

v.

UBS EUROPE SE LUXEMBOURG  
BRANCH, et al.,

Defendants.

Adv. Pro. No. 11-01250 (CGM)

FAIRFIELD SENTRY LTD. (IN  
LIQUIDATION), et al.,

Plaintiffs,

v.

MERRILL LYNCH INTERNATIONAL,  
et al.,

Defendants.

Adv. Pro. No. 11-01463 (CGM)

FAIRFIELD SENTRY LTD. (IN  
LIQUIDATION), et al.,

Plaintiffs,

v.

BNP PARIBAS SECURITIES NOMINEES  
LTD., et al.,

Defendants.

Adv. Pro. No. 11-01579 (CGM)

FAIRFIELD SENTRY LTD. (IN  
LIQUIDATION), et al.,

Plaintiffs,

v.

FORTIS BANK, SA/NV, et al.,

Defendants.

Adv. Pro. No. 11-01617 (CGM)

FAIRFIELD SENTRY LTD. (IN  
LIQUIDATION), et al.,

Plaintiffs,

v.

CITIGROUP GLOBAL MARKETS LTD.,  
et al.,

Defendants.

Adv. Pro. No. 11-02770 (CGM)

FAIRFIELD SENTRY LTD. (IN  
LIQUIDATION), et al.,

Plaintiffs,

v.

BNP PARIBAS ESPANA, et al.,

Defendants.

Adv. Pro. No. 12-01551 (CGM)

**DECLARATION OF DAVID ELSBERG IN SUPPORT OF**  
**MOTION FOR LEAVE TO FILE THE FURTHER PROPOSED AMENDED**  
**COMPLAINTS IN THE KNOWLEDGE ACTIONS**

DAVID ELSBERG, an attorney duly admitted to practice law before this Court, declares the following under penalty of perjury:

1. I am a member of the law firm of Selendy & Gay PLLC, counsel for Kenneth M. Kryz and Greig Mitchell (together, the “Liquidators” or “Foreign Representatives”), in their capacities as the duly appointed Liquidators and Foreign Representatives of Fairfield Sentry Limited (In Liquidation), Fairfield Sigma Limited (In Liquidation), and Fairfield Lambda Limited (In Liquidation) in these consolidated adversary proceedings (the “U.S. Redeemer Actions”). I make this Declaration based on my own personal knowledge, pursuant to 28 U.S. Code § 1746, and in support of the Liquidators’ motion for leave to file further proposed amended complaints (the “Motion”) in the subset of adversary proceedings captioned above (the “Knowledge Actions”).

2. A chronology detailing the procedural history of this case, including a nearly 5-year stay of litigation, was previously submitted to this Court (Dkt. 3090-1) and is reattached herein as Exhibit 8. The following recitation highlights aspects of the factual and procedural history relevant to this motion.

3. In December 2018, this Court issued a decision granting in part and denying in part Defendants’ motion to dismiss and plaintiffs’ motions for leave to amend. *See* Dkt. 1743, *Fairfield Sentry Ltd. (In Liquidation) v. Theodoor GGC Amsterdam*, 596 B.R. 275, 283 (Bankr. S.D.N.Y. 2018) (“*Fairfield II*”). In relevant part, the Court held in *Fairfield II* that the Liquidators could proceed on a constructive trust claim only as to Defendants who “knew the [net asset value of the shares] was inflated at the time of redemption.” *Id.* at 295. Following *Fairfield II*, the Liquidators and Defendants negotiated 303 orders implementing the *Fairfield II* decision, 300 of which were filed between April 2 and April 18, 2019, and 3 of which were filed

on August 5, 2019.

4. Following *Fairfield II*, the Liquidators began the intensive process of drafting and filing 29 particularized further proposed amended complaints against more than 100 Defendants in accordance with the legal standards established in *Fairfield II*. To comply with Rule 11 obligations to investigate the alleged facts, counsel took numerous steps, including but not limited to the following:

5. *First*, counsel reviewed publicly filed complaints in Madoff-related litigation, including complaints filed in litigation brought by Irving H. Picard, who was appointed pursuant to the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC, *see generally In re Bernard L. Madoff Investment Securities LLC*, Adv. Pro. No. 08-01789 (Bankr. S.D.N.Y.), several of which were filed after the Liquidators' initial round of amendments in 2016.

6. *Second*, counsel reviewed public records and materials concerning the facts underlying the U.S. Redeemer Actions, including: (1) SEC filings; and (2) data, information, and corporate records pulled from public records, including Bloomberg Terminal readouts.

7. *Third*, counsel reviewed documents produced by Citco entities in the *Anwar v. Fairfield Greenwich Ltd.*, No. 09-cv-00118-VM (S.D.N.Y.), obtained pursuant to a Rule 2004 subpoena in the Chapter 15 action, No. 10-13164, served by the Liquidators upon the Citco entities. *See* Nov. 24, 2014 Ltr. from D. Molton to A. Gordon (Dkt. 907-2).

8. Moreover, in March 2019, just four months after *Fairfield II*, the Liquidators' foreign law expert—Gabriel Moss QC—tragically and unexpectedly passed away. In the months that followed, the Liquidators' counsel sought out and ultimately retained a new foreign law expert. The Liquidators' counsel then spent a significant amount of time familiarizing the new

expert with the nuances of the case—an essential effort before the Liquidators could utilize the expert’s expertise in preparing their further proposed amended complaints.

9. The orders implementing *Fairfield II* provided that the Liquidators would file the operative complaints that survived *Fairfield II* but provided no date certain by which the Liquidators had to complete such filing.

10. On December 18, 2019, Defendants’ counsel requested that the Liquidators “file [their] complaints by no later than January 15, 2020.” Despite having no obligation to do so, the Liquidators agreed to Defendants’ request. *See* Exhibit 6.

11. After consulting with their new expert and completing the fact investigation detailed above, the Liquidators certified completion of the filing of the operative complaints on January 15, 2020, as agreed with Defendants, and, on the same day, the Liquidators moved for leave to file the further proposed amended complaints. *See* Mot. for Leave to File the Further Proposed Amended Complaints (Dkt. 2873).

12. Pursuant to this Court’s April 26, 2021 order (Dkt. 3616), that prior motion was dismissed without prejudice and the Liquidators were instructed to file the instant Motion.

13. Attached as **Exhibit 1** is a schedule of all Knowledge Actions, along with the corresponding redemption values for each.

14. Attached as **Exhibit 2** is a true and correct copy of the official transcript of the omnibus hearing held before this Court on April 21, 2021.

15. Attached as **Exhibit 3** is a true and correct copy of an April 23, 2021 correspondence between Ronald Krock and Nowell Bamberger.

16. Attached as **Exhibit 4** is a true and correct copy of a December 12, 2019 to December 18, 2019 correspondence between Lena Konanova and Joseph Kay.



17. Attached as **Exhibit 5** is a true and correct copy of a January 15, 2020 correspondence from Lena Konanova to Joseph Kay, Thomas Moloney, and Christine Jordan.

18. Attached as **Exhibit 6** is a schedule of orders filed in the Knowledge Actions implementing *Fairfield II*, as well as the dates and docket entries on which those orders were entered, and the dates and docket entries on which the Liquidators filed the amended complaints authorized by those orders.

19. Attached as **Exhibit 7** is a schedule of orders filed in the Knowledge Actions implementing *Fairfield II*, together with excerpted relevant language showing that the parties acknowledged Plaintiffs contemplated moving for file further proposed amended complaints.

20. Attached as **Exhibit 8** is a case chronology, previously submitted to this Court (Dkt. 3090-1).

21. Attached as **Exhibit 9** is a proposed order granting the Motion.

22. The following paragraphs identify the further proposed amended complaints filed in each of the Knowledge Actions and are grouped by each category of Knowledge Defendant.

**A. BNP Paribas**

23. Attached as **Exhibit 10** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. BGL BNP Paribas S.A.*, Adv. Pro. No. 10-03626-CGM (Bankr. S.D.N.Y.).

24. Attached as **Exhibit 11** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. BNP Paribas Secs. Servs. Lux.*, Adv. Pro. No. 10-03627-CGM (Bankr. S.D.N.Y.).

25. Attached as **Exhibit 12** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. BNP Paribas Arbitrage SNC*, Adv. Pro. No. 10-04098-CGM (Bankr. S.D.N.Y.).

26. Attached as **Exhibit 13** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. BNP Paribas Private Bank & Trust Cayman Ltd.*, Adv. Pro. No. 10-04099-CGM (Bankr. S.D.N.Y.).

27. Attached as **Exhibit 14** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. BNP Paribas Secs. Nominees Ltd.*, Adv. Pro. No. 11-01579-CGM (Bankr. S.D.N.Y.).

28. Attached as **Exhibit 15** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. BNP Paribas España*, Adv. Pro. No. 12-01551-CGM (Bankr. S.D.N.Y.).

29. Attached as **Exhibit 16** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. Fortis Bank, SA/NV n/k/a BNP Paribas Fortis*, Adv. Pro. No. 11-01617-CGM (Bankr. S.D.N.Y.)

**B. Citco Beneficial Owners**

30. Attached as **Exhibit 17** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. ABN AMRO Schweiz AG*, Adv. Pro. No. 10-03635-CGM (Bankr. S.D.N.Y.).

31. Attached as **Exhibit 18** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. ABN AMRO Schweiz AG*, Adv. Pro. No. 10-03636-CGM (Bankr. S.D.N.Y.).

**C. Citigroup**

32. Attached as **Exhibit 19** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. Citibank NA London*, Adv. Pro. No. 10-03622-CGM (Bankr. S.D.N.Y.).

33. Attached as **Exhibit 20** is a true and correct copy of the further proposed amended

complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. Citigroup Global Markets Ltd.*, Adv. Pro. No. 11-02770-CGM (Bankr. S.D.N.Y.).

**D. HSBC**

34. Attached as **Exhibit 21** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. HSBC Secs. Servs. (Lux.) S.A.*, Adv. Pro. No. 10-03630-CGM (Bankr. S.D.N.Y.).

35. Attached as **Exhibit 22** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. HSBC Private Bank (Suisse) S.A.*, Adv. Pro. No. 10-03633-CGM (Bankr. S.D.N.Y.).

**E. Merrill Lynch**

36. Attached as **Exhibit 23** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. Merrill Lynch Int'l*, Adv. Pro. No. 11-01463-CGM (Bankr. S.D.N.Y.).

**F. UBS**

37. Attached as **Exhibit 24** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. UBS AG N.Y.*, Adv. Pro. No. 10-03780-CGM (Bankr. S.D.N.Y.).

38. Attached as **Exhibit 25** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. UBS Europe SA, Luxembourg Branch f/k/a UBS Lux. SA*, Adv. Pro. No. 11-01250-CGM (Bankr. S.D.N.Y.)

**G. Zurich Capital Markets**

39. Attached as **Exhibit 26** is a true and correct copy of the further proposed amended complaint filed in *Fairfield Sentry Ltd. (In Liquidation) v. Zurich Capital Mkts. Co.*, Adv. Pro. No. 10-03634-CGM (Bankr. S.D.N.Y.).

Dated: New York, New York  
May 14, 2021

/s/ David Elsberg  
David Elsberg